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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

Grover Sellers
Attorney General

Hon. Nolan Queen
Criminal District Attorney
Weatherford, Texas

Dear Sir:

Opinion No. 0-3528

Re: Correct rate of pay for deputy
tax assessors-collectors in Parker
County; and a related question.

We have your request for an opinion, which is as follows:

"We are finding it impossible to employ Deputy Tax Assessors to assess taxes for (12½¢) twelve and one-half cents in the City and (15¢) fifteen cents in the country as provided by a Statute.

"In fact it is impossible for us to hire them next year on that basis.

"Do you think the Commissioners' Court of Parker County has a right to raise the fees for assessing taxes from 12½¢ in the city and 15¢ in the country to a figure they would consider right and proper? In fact, we contemplate raising it to 15¢ in town and 20¢ in the country if it can be done.

"If it cannot be done this way, could it be taken care of out of the expense account of the Tax Assessor's and Collector's office."

In answer to your questions we advise as follows:
It is our understanding that according to the last preceding Federal census, Parker County has a population of 20,482.

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It is also our understanding that the assessed valuation of Parker county, as shown by the 1942 tax rolls, was \$11,536,960. If we are correct as to the above set out population and assessed valuation of Parker County, then Parker County comes under the provisions of Art. 3902, V.A.C.S. of Texas, which provides:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts:

"1. In counties having a population of twenty-five thousand (25,000) or less inhabitants, first assistant or chief deputy not to exceed Eighteen Hundred (\$1800.00) Dollars per annum; other assistants, deputies or clerks not to exceed Fifteen Hundred (\$1500.00) Dollars per annum each.

"1-a. In counties having a population of twenty-five thousand (25,000) inhabitants or less, according to the last preceding Federal Census, and whose tax values exceed One Hundred Million Dollars (\$100,000,000), according to the last approved tax rolls, the first assistant to the Tax Assessor and Collector and the first

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assistant to the County Clerk may each receive an annual salary of not to exceed Three Thousand Dollars (\$3,000) per annum, and the cashier to the Tax Assessor and Collector and the County Clerk may each receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum. The Tax Assessor and Collector shall designate in addition to the first assistant and cashier, two heads of departments, one to be in charge of assessing and one to be in charge of collecting in such counties, who may receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and any additional assistants, deputies or clerks to the Tax Assessor and Collector or the County Clerk may receive an annual salary of not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum."

If we are correct as to our understanding of the assessed tax valuation and the population of Parker County, as above mentioned, then you are advised that under the provisions of said Art. 3902, the compensation which legally may be allowed to the deputies of the Tax Assessor and Collector of Parker County cannot exceed the following named amounts: (a) first assistant, or chief deputy, \$1800. per annum; (b) other deputies, not to exceed \$1500. per annum each.

You are further advised that the salaries of deputies in the office of the Tax Assessor and Collector may not be increased above the maximum allowed by law for their salaries by the device of paying them any additional compensation out of the expense account of the office, or from any other source, or by any other device.

If Parker County has a population as indicated above, then Parker County officers are on a salary basis. In counties wherein the county officers are paid on a salary basis, the disposition of their fees is governed by the provisions of Art. 3912e. The Article mentioned is lengthy and we shall not set it out in full here, as you of course have access to it. But we point out this portion of Sec. 1, of said article, same being especially pertinent to your question as to whether or not the deputies of the Assessor could be paid increased compensation from the "expense account" of said office. Said Sec. 1, in part, is as follows:

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"No district officer shall be paid by the State of Texas any fees or commission for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund or funds created and provided for under the provisions of this Act;

. . .

"

"Sec. 5. It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. . . . "(Emphasis added)

It is quite plain that under provisions of the law just referred to, all the moneys which come into the hands of the tax assessor and collector by way of fees and commissions are disposed of and must be strictly accounted for, by that officer.

Any payment out of any "Expense account" to any deputy by way of salary would not only be an evasion of the law, but would be a direct violation thereof.

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On August 16, 1943, we addressed a letter to you, requesting citation to the statute mentioned in the first paragraph of your request, copied above, but have received no reply thereto. Since we have been unable to find the statute referred to, we have concluded to base our opinion upon the general statutes cited above.

Our answers to both of your questions are in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ George P. Blackburn
Assistant

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APPROVED SEPT. 1, 1943
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
By -B.W.B., Chairman